

Application Number 10/588,532
AMENDMENT of October 26, 2009
Response to Office Action of August 24, 2009

REMARKS/ARGUMENT

The Applicants respond under 37 C.F.R. § 1.116 to the final Office Action of August 24, 2009.

Claims 9 through 19 are pending in the application. Claim 19 is amended. Claims 1 through 8 were previously canceled, and claim 18 was previously withdrawn. No fee is required.

A corrected terminal disclaimer accompanies this response. The official fee was previously charged to Deposit Account No. 15-0700 on June 2, 2009. No additional fee is due.

1. Rejection on the Ground of Obviousness-Type Double Patenting

Claims 9 through 17 and 19 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 9 through 19 and 21 of co-pending U.S. Patent Application No. 10/587,802. As pointed out in the Office Action, a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

The present application and U.S. Patent Application No. 10/587,802 are commonly owned by Bayer CropScience S.A., 16 Jean-Marie Leclair, F-69009 Lyon, France.

A terminal disclaimer under 37 C.F.R. § 1.321(b) and (c) disclaiming, with the customary exceptions, the terminal part of the statutory term of any patent granted on the instant application

Application Number 10/588,532
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that would extend beyond the expiration date(s) of the full statutory term(s) of any patent(s) issued on U.S. Patent Application No. 10/587,802 is filed herewith.

Accordingly, it is requested that the provisional rejection of claims 9 through 17 and 19 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 9 through 19 and 21 of U.S. Patent Application No. 10/587,802 in view of Leroux be withdrawn.

2. Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 9 through 17 and 19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicants have amended claim 19 to correct a clerical error in the phrase “~~as to~~ and the N-oxides of 2-pyridine thereof.” It is thus submitted that those skilled in the art will readily understand what is meant by this feature which, of course, is not a limitation but, rather, an extension of the definition of component, and that this language refers to any of the three compounds listed in claim 19 wherein an oxygen atom is bonded to the nitrogen atom of the pyridine ring therein.

Accordingly, it is requested that the rejection of claims 9 through 17 and 19 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention, be withdrawn.

Application Number 10/588,532
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3. Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration is requested.

Respectfully submitted,



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